

TENNESSEE REAL ESTATE COMMISSION MINUTES
March 9 – 10, 2010

The Tennessee Real Estate Commission convened on March 9, 2010, at 9:05 a.m. in the Grand Mirabella GH room of the Embassy Suites Convention & Conference Center at 1200 Conference Drive, Murfreesboro, Tennessee. **The following Commission Members were present Chairman Grover Collins, Vice-Chairman Isaac Northern, Commissioner Charles Haynes, Commissioner Wendell Alexander, Commissioner William "Bear" Stephenson, Commissioner David Flitcroft and Commissioner Carol Tate. Commissioner Allen Woods joined the meeting at 1:08 p.m. Commissioner Valerie Joh was absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Robyn Ryan, Assistant General Counsel, Mandy Spencer, Paralegal and Kelly McDermott, Administrative Secretary.**

Candy Joyce, Executive Vice President of the Middle Tennessee Association of Realtors welcomed the Commission and introduced Rutherford County Mayor Ernest Burgess. Mayor Burgess welcomed the Commission and spoke of the growth of Rutherford County. Janet Nettles, President Elect of the Middle Tennessee Association of Realtors, also welcomed the Commission to Murfreesboro.

Ms. Maxwell introduced to the Commission TREC's new Education Director Steve McDonald. Mr. McDonald spoke briefly to the Commission and expressed that it is his pleasure to have joined the TREC staff and that he looks forward to working with the Commission.

The first order of business was the adoption of the agenda (**Exhibit 1**) for the March 2010 Commission meeting. **Vice-Chairman Northern made a motion to adopt the agenda; seconded by Commissioner Haynes; unanimous vote; motion carried.**

The next order of business was the approval of the minutes from the February 2010 meeting (**Exhibit 2**). **Commissioner Stephenson made a motion to approve the February 2010 meeting minutes; seconded by Commissioner Tate; vote: 5 yes, 0 no, Commissioner Haynes abstained as he was absent from the February meeting; motion carried.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented the following information to the Commission for review:

- **Complaint Statistics Report (Exhibit 3)** – Ms Maxwell presented licensing statistics to the Commission. As of March 5, 2010, TREC had a total of 106 open complaints. Of those 106 open complaints, 10 are Errors & Omissions insurance complaints. There were 19 new complaints in February 2010. There are 97 complaints in the legal department and 9 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2009-2010 is 369. Total Civil Penalties paid in February 2010 were \$10,340.00.

Eddie Bernard, District Attorney of the 17th Judicial District, addressed the Commission regarding Judicial Diversion and Post Plea Diversion. He explained that in Pretrial diversion, a defendant has not entered a plea nor have they been found guilty. They are placed on probation for no less than the maximum sentence of a misdemeanor. In the case of a felony, the defendant is placed on probation for no more than two years. If the defendant successfully completed pretrial diversion, they can have their record expunged. Their record is kept by the FBI, the TBI and the local DA and that information can only be released under special circumstances. He explained that when a person is placed on Judicial Diversion, they do not have a judgment conviction. The defendant is charged and convicted but no judgment has been entered. He explained that even after the successful completion of Judicial Diversion, the information regarding the conviction can be subpoenaed in civil court when the defendant becomes a litigant. Ms. Ryan asked DA Bernard to relate how Judicial Diversion relates to the statute 62-13-312(f) which requires a licensee to report a conviction within 60 days of the date of conviction and request a hearing before the Commission or their license can be automatically revoked. Mr. Bernard reiterated that the person is convicted in layman terms but judgment has not been entered in legal terms. If the defendant does not satisfy the terms of their Judicial Diversion, then the case will be reopened. He advised that judicial diversion is the same as probation. Ms. Maxwell and Ms. Ryan explained that the reason they felt these legal concepts should be discussed was because there were several current licensees in a judicial diversion status and they wanted to make sure that no current licensee was revoked under T.C.A. §62-13-312(f) when there was no judicial conviction. Ms. Maxwell and Ms. Ryan also wanted to make sure that the Commissioners were well informed concerning these distinctions because of the hearing to be conducted the next day of the meeting and because of applicants who appear for informal conferences at TREC's monthly meetings.

- **Licensing Statistics (Exhibit 4)** – Ms. Maxwell presented licensing statistics for the month of February 2010. As of March 1, 2010, there were 27,385 active licensees, 2,199 inactive licensees and 10,638 retired licensees. There were 4,459 active firms and 355 retired firms. There were 257 new applications approved in February 2010. She also presented statistics on license renewal percentages (i.e. how many sent by month, the number not renewed by the 61st day and the percentage of licensees not renewed). She also presented statistics for comparison of the number of test takers for 2006, 2007, 2008 and 2009. She presented the number of test takers by testing site for 2008, 2009 and 2010. Further, she presented a comparison of total licensees for individuals and firms in 2008, 2009 and 2010.

Ms. Maxwell presented a request (Exhibit 5) by Representative Stacey Campfield on behalf of one of his constituents. Representative Campfield has requested the Commission consider that a licensee be able to change the status of their license to retired without having to be current with their continuing education. Ms. Maxwell advised that currently this is not the requirement stated in 62-13-318(a)(2). She asked that the Commission consider the request and the changes it would put in place for our licensees in the future. She explained that establishment of requirements would be

necessary to notify licensees of the amount of hours required to re-activate their license regardless of the amount of time the license was in a state of retirement. In addition, Ms. Maxwell advised the fee charged to the licensee is of importance. Ms. Maxwell asked for any input regarding Representative Campfield proposing legislation regarding this matter on behalf of his constituent. It was the consensus of the Commission that they would not be involved in any potential legislation regarding this matter.

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented Courses for Commission Evaluation. After discussion, **Commissioner Flitcroft made a motion to approve all of the courses presented; seconded by Commissioner Tate; unanimous vote; motion carried.**

Mr. Steve McDonald, Education Director, presented the following instructor reviews to the Commission.

- Lorie W. Jaynes of SunTrust Mortgage sought approval for **Wendi F. Carter** as an instructor in the topic area of Financing Real Estate.
- Sally Cummings of TAR requested that **Susan Barnett** be approved to teach course #6281, "Short Sales and Foreclosures – REBAC Courses".
- Sally Cummings of TAR sought approval for **Ruth Fennell** to teach course #6281, "Short Sales and Foreclosure".
- Sally Cummings of TAR sought approval of **Ruth Fennell** as an instructor for course #2656, "At Home with Diversity".
- Edward Gettelfinger sought approval for **Kathleen M. England** as an instructor for course #3552, "Enhancing Customer Service" offered by Courthouse Education Services.
- Sally Cummings of TAR sought approval for **Marty Calfee** as an instructor for course #5968 "TREC Core".
- Sally Cummings of TAR sought approval for **Marty Calfee** as an instructor for course #6257, "Agency in Tennessee".
- Regina Harvey of Council of Residential Specialists sought approval for **Gee Dunsten** as an instructor for the CRS courses currently approved in the State of Tennessee.
- Regina Harvey of Council of Residential Specialists sought approval for **LeRoy Houser** as an instructor for the CRS courses currently approved in the State of Tennessee.
- Karen Czarneski of the Williamson County Association of REALORS sought approval for **Robin Barnes** as an instructor for courses #5546, "Microsoft Excel", course #5547, "Microsoft Word" and course #5652, "Microsoft PowerPoint".
- Randall Isaacson, sponsor #1366, of ServPro sought approval for **Tiffanie Elliot** as an instructor for the course #4227, "Understanding Mold in the Restoration Industry".

Commissioner Stephenson made a motion to approve the above instructor requests; seconded by Vice-Chairman Northern; unanimous vote; motion carried.

INFORMAL CONFERENCE

Christine Lundy (formerly Christine Miller), revoked licensee 280316, appeared with her potential Principal Broker Ric Bowman, to request that she be allowed to retest and reapply for an affiliate broker license. Her license was revoked in November 2004 for failing to notify the Commission of a felony conviction. In May 2004, Ms. Lundy was convicted of Theft of Property over \$10,000.00, a Class C Felony. Her probation was terminated early on May 18, 2007. Commissioner Tate made a motion to approve Ms. Lundy's request to retest and reapply for an affiliate broker license; seconded by Vice-Chairman Northern; roll call vote: 7 yes, 0 no; motion carried.

Ms. Ryan reviewed the Attorney General's Opinion #10-09 from January 26, 2010 regarding Tennessee Real Estate Commission Education Course Approval. Ms. Ryan presented the Commission with some bullet points from Wayne Pugh, General Counsel for the Department of Commerce & Insurance. Below are the points offered by Mr. Pugh regarding the opinion.

1. The opinion states that the Real Estate Commission must follow its rules until such time as it changes them through proper rule making procedures.
2. The opinion states that the term of approval for the real estate education courses be changed and applied retroactively provided that it is done so through a proper rule change. The opinion cautions that the change could be challenged in court but opines that it would survive such a challenge.
3. The opinion provides that if proper rule making procedures were not followed in promulgating a rule, specifically the Regulatory Flexibility Act requirements, then the rule would be invalid.

LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL

- 1) **2008012311**
- 2) **2008001591 – Commissioner Flitcroft made a motion to dismiss both complaints; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 3) **2008004011 – This complaint was deferred because it was previously reviewed by Commissioner Woods and he was absent from the meeting.**
- 4) **2007070801 &**
- 5) **2007070802 – Commissioner Tate made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes for discussion; opened to discussion; unanimous vote; motion carried.**
- 6) **2008014661 – Commissioner Alexander made a motion to accept legal counsel's recommendation to issue a Letter of Warning regarding Rule 1260-2-.12 [Advertising]; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 7) **2008020761 – The complaint was deferred to obtain additional information.**

Chairman Collins recessed the meeting for lunch at 11:26 a.m. and reconvened at 1:08 p.m.

Commissioner Woods joined the meeting at 1:08 p.m.

The Commission participated in a Question and Answer session with the Tennessee Association of Realtors. TREC held the Commission meeting in the same facility as TAR's Spring Conference. Members of the Commission and TREC staff answered questions from the membership of TAR in attendance regarding matters of concern to them as real estate licensees.

Commissioner Haynes left the meeting at 1:55 p.m. and did not return.

LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL (continued)

- #3) 2008004011 – The complaint will be deferred until the May 2010 meeting.**
- 8) 2008015251 &**
- 9) 2008015252 – Commissioner Flitcroft made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 10) 2009008941 – Commissioner Woods made a motion to dismiss; seconded by Commissioner Tate; vote: 6 yes, 0 no; Vice-Chairman Northern abstained; motion carried.**
- 11) 2008011211 – Commissioner Woods made a motion to send a Letter of Warning regarding T.C.A. §62-13-312 [making any substantial and willful misrepresentation] and issue a Consent Order requiring four hours of additional continuing education in contract writing to be completed within 12 months; seconded by Commissioner Tate; Commissioner Alexander offered a friendly amendment to send an auditor to audit the escrow account; seconded by Vice-Chairman Northern; Commissioner Woods accepted the friendly amendment; unanimous vote; motion as amended carried.**
- 12) 2008010611 &**
- 13) 2008010612 – Commissioner Tate made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 14) 2008012611 – Commissioner Woods made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 15) 2008011941 – Commissioner Woods made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 16) 2008001581 – Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 17) 2010000231 – Vice-Chairman Northern made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$500.00 for a violating 62-13-312(b) [a license obtained by false representation]; seconded by Commissioner Tate; unanimous vote; motion carried.**

- 18) **2006036791 – Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 19) **2008008751 &**
- 20) **2008008752 – Commissioner Stephenson made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 21) **2008023051 &**
- 22) **2008023052 – Commissioner Woods made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$500.00 for failing to diligently exercise skill and care in providing services [T.C.A. §62-13-403(1)]; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 23) **2008022321 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,500.00; no second; motion failed for lack of a second. After discussion and being advised by legal counsel that the maximum penalty that can be assessed is \$1,000.00, Commissioner Alexander made a motion to issue a Consent Order with civil penalty of \$1,000.00, requiring attendance at a two day Commission meeting within six months and four hours of additional continuing education in ethics outside the Commission meeting within six months; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 24) **2010001621 – Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.**

Ms. Ryan reviewed the Legal File Summary and Consent Order Log with the Commission.

COMMISSIONER REPORTS

Chairman Collins, Vice-Chairman Northern, Commissioner Woods, Commissioner Tate, Commissioner Stephenson, Commissioner Flitcroft and Commissioner Alexander reported on matters of concern to them and to the Commission.

Chairman Collins recessed the meeting Tuesday, March 9, 2010 at 3:00 p.m.

TENNESSEE REAL ESTATE COMMISSION
March 10, 2010

The Tennessee Real Estate Commission convened on March 10, 2010, at 9:12 a.m. in the Grand Mirabella GH room of the Embassy Suites Convention & Conference Center at 1200 Conference Drive, Murfreesboro, Tennessee. **The following Commission Members were present Chairman Grover Collins, Vice-Chairman Isaac Northern, Commissioner William "Bear" Stephenson, Commissioner David Flitcroft, Commissioner Carol Tate and Commissioner Allen Woods. Commissioner Charles Haynes, Commissioner Wendell Alexander and Commissioner Valerie Joh were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Robyn Ryan, Assistant General Counsel, Mandy Spencer, Paralegal and Kelly McDermott, Administrative Secretary.**

The Commission stood in recess at 9:13 a.m. to conduct a formal hearings in the matters of Angela Masters, licensee #281792, Docket # 12.18-105738A and Karla Sells Gourley, license # 290042, Docket # 12.18-104874A.

The Commission ordered the revocation of the license of Angela Masters, license # 281792, Docket #12.18-105738A for failure to obtain Errors & Omissions insurance and failure to perform administrative measures in a timely manner. The Commissioner further ordered that Ms. Masters be assessed the cost of the formal hearing.

In the matter of Karla Sells Gourley, license # 290042, Docket # 12.18-104874A, the Commission voted to issue an Agreed Order requiring Ms. Sells Gourley to pay the costs of her formal hearing, have the drug court provide periodic updates of her drug testing and consent to return for a full revocation hearing if she fails to adhere to the Agreed Order. There was a roll call vote. The vote was 5 yes and 0 no. Commissioner Flitcroft abstained. The offer was extended to Ms. Sells Gourley and her legal counsel and was accepted. Her legal counsel will draw up the order.

The formal hearings adjourned at 11:38 a.m.

Chairman Collins adjourned the meeting Wednesday, March 10, 2010 at 11:39 a.m.